

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 268 OF 1983

The Commissioner of Income-Tax
Gujarat-I, Ahmedabad .. Applicant

Versus

Shri Suhasbhai Vadilal .. Respondents

Date of Decision : 26th November 1996

For Approval and Signature

THE HONOURABLE MR. JUSTICE R.K. ABICHANDANI

THE HONOURABLE MR. JUSTICE RAJESH BALIA

Mr.M.J.Thakore for Mr.Manish R. Bhatt for the applicant
Mr.J.P.Shah for the respondent

1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of Judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram : R.K. Abichandani and Rajesh Balia, JJ
26th November 1996

Oral Judgement (Per R.K. Abichandani, J)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench A has referred to this Court the following questions for its opinion under Section 256(2) of the Income Tax Act:

1. "Whether, on the facts and in the circumstances of the case, inclusion of the share of the assessee in the estate of Smt. Bhuriben Lallubhai is not justified in law?"
2. "Whether, the finding of the Appellate Tribunal that administration was not complete and hence the inclusion of the share income of the estate at the assessee's hands was not justified and correct in law?"
3. "Whether, the Appellate Tribunal has been right in law in distinguishing the decision of Gujarat High Court in the case of Navnitlal Sakarlal and it was not proper to include the share income of the estate in the assessee's hands?"

2. In this case, the original assessment was made on 27.2.1971 and the total income was determined at Rs.1,32,180/-. The case was reopened under Section 147(a) of the Act with the previous approval of the Commissioner of Income Tax as it was found that the assessee had not shown in the original return his share from income received by the estate of Bhuriben Lallubhai, who had executed a will dated 29.3.1959, wherein the assessee is one of the beneficiaries. Though no executor was appointed under the will, the assessee was voluntarily administering the estate. The Income Tax Officer vide his order dated 22.3.1976 holding that the present case was distinguishable from the case of C.I.T. vs. Navnitlal Sakarlal reported in 125 ITR 67 added the income of Rs.11,889/-, being one half share of the income of the estate of Bhuriben to the income of the assessee for the year 1967-68. By another order dated 22.3.1976, the Income Tax Officer for the same reasons added Rs.9,843/to the income of the assessee for the assessment year 1968-69. The C.I.T. (Appeals) confirmed the assessment

rejecting the two appeals of the assessee on 9.11.1978. The Tribunal holding that the assessee was the executor inasmuch as he was looking after the affairs of the estate and further that the administration was not complete, allowed both the appeals of the assessee, holding that it was improper to include the share of the income of the estate in the assessee's hands.

3. Under Section 168(1) of the said Act, it is *inter alia* provided that the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor and such executor includes an administrator or other person administering the estate of a deceased person. As held by the Supreme Court in *Navnitlal Sakarlal vs. C.I.T.* reported in 193 ITR 16, Section 168(3) of the said Act makes it clear that the executor will continue to be assessed until the estate is distributed among the beneficiaries according to their several interests. The decision of this Court in *C.I.T. vs. Navnitlal* (*supra*) was reversed on this point. In the present case, admittedly, the administration had not been completed and therefore the income of the estate of the deceased testator was chargeable to tax in the hands of the executor and not in the hands of the assessee in his individual capacity. In this view of the matter, the income of the estate of the deceased testator Bhuriben could not have been assessed in the hands of the assessee as a part of his total income. The Questions Nos. 1 and 2 referred to us are therefore answered in the affirmative. As regards Question No.3, since the decision of this Court in *C.I.T. vs. Navnitlal* (*supra*) on the point in issue has been reversed by the Supreme Court in *Navnitlal Sakarlal vs. C.I.T.* (*supra*), it is not necessary for us to answer the Question No.3. The reference is disposed of accordingly with no order as to costs.
